IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 150 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHYAMA SARABHAI

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 150 of 1988
MR RK PATEL for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the

assessee, the following questions have been referred for the opinion of this Court in respect of assessment year 1971-72 :-

"(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding reassessment u/s. 147(a) on the ground that the quality of disclosure in the original assessment was neither a full disclosure of material facts nor true disclosure of the primary facts ?

(2) If the answer to question No. 1 is in the affirmative, is the Tribunal justified in upholding the decision of Commissioner of Income-tax (Appeals) that the assessee was liable to pay tax in respect of capital gains on receipt of the amount equal to the face value of the preference shares of Gautam Sarabhai Pvt. Ltd. on the company redeeming its preference shares ?"

2. We have heard Mr RK Patel, learned counsel for the assessee and Mr BB Naik, learned counsel for the revenue.

3. Mr RK Patel, learned counsel for the assessee states, under instructions from the assessee, that the assessee does not press the reference in respect of question No. 1.

Accordingly, we decline to answer question No. 1.

4. Coming to question No. 2, the learned counsel for the parties state that the controversy raised herein is concluded in favour of the revenue by the decision of the Apex Court in Anarkali Sarabhai vs. CIT, 224 ITR 422

In view of the aforesaid decision, we are of the view that the Tribunal was justified in upholding the decision of the Commissioner of Income-tax (Appeals) that the assessee was liable to pay tax in respect of capital gains on receipt of the amount equal to the face value of the preference shares of Gautam Sarabhai Pvt. Ltd. on the Company redeeming its preference shares.

Accordingly our answer to question No. 2 is in the affirmative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-